Supreme Court of the United States.

No. 503.—October Term, 1901.

The United States Appellant, vs. Lee Yen Tai. } On certificate from the United States Circuit Court of Appeals for the Second Circuit.

[April 21st 1902.]

Mr. Justice Harlan delivered the opinion of the Court.

This case is here upon a certified question of law arising in the Circuit Court of Appeals for the Second Circuit.

The facts out of which the question arose and the question itself are shown by the following statement sent up by that court:

"On the 8th day of October 1900 complaint was made under oath before a commissioner of the United States for the Northern District of New York, charging that Lee Gin Moy, *alias* Lee Yen Tai, on the sixth day of October A. D. 1900 'did unlawfully come into the United States from China, he being then and there a Chinese person and laborer, and not being a diplomatic or other officer of the Chinese or any other Government, and without producing the certificate required of Chinese persons seeking to enter the United States, and that he was not entitled to be or remain within the United States.' A warrant for said defendant's arrest was issued by said United States commissioner on the same day, and after a hearing before said commissioner he issued a warrant of deportation in which the following adjudication was placed on record:

"'I now hereby find and adjudge that the said Lee Gin Moy is a Chinese person and laborer; that he is not a diplomatic or other officer of the Chinese, or of any other Government, and unlawfully entered the United States as charged in said complaint; and I further adjudge him, said Lee Gin Moy, guilty of not being lawfully entitled to be or remain in the United States.'

"Said defendant's immediate removal to China by the United States Marshal for said Northern District of New York upon said warrant was ordered by said commissioner. While the marshal had him in custody, and in process of deportation, *habeas corpus* was issued by the District Court for the Southern District of New York. The petition upon which the writ of *habeas corpus* issued averred, among other things, that said Lee Yen Tai was a merchant having an interest of one thousand

dollars ($1,000) in the capital of the firm, and is not a laborer, and has not been a laborer, but is a merchant and member of a firm specified in the petition, and has always been a merchant since he had any status.

"Before the District Court the prisoner was produced, and a return made which included the aforesaid warrant of deportation; said return was traversed and no evidence as to defendant's status other than the allegations in the aforesaid petition and return was before the District Court. Upon the hearing in the District Court the petitioner was discharged upon giving bail for his appearance as may be determined by any final order on appeal. Appeal was duly taken by the United States to this court."

By the preamble of the act of May 6th, 1882, *c.* 126, it was declared that in the opinion of the Government of the United States the coming of Chinese laborers to this country endangered the good order of certain localities within our territory. It was therefore provided that from and after the expiration of ninety days from the above date, and until the expiration of ten years from such date, the coming of Chinese laborers to the United States should be suspended, and during such suspension it was made unlawful for any Chinese laborer to come, or having come after the expiration of said ninety days, to remain within the United States. § 1. Penalties were imposed upon the master of any vessel who should knowingly bring within the United States on his vessel and land or permit to be landed any Chinese laborer from any foreign port or place. § 2. In order to identify such Chinese as were entitled, under the treaty of November 17th 1880, 22 *Stat.* 826, to go from and come to the United States of their free will and accord, provision was made for certificates to be granted to such persons. § 4.

The twelfth section of the above act was as follows:

"That no Chinese person shall be permitted to enter the United States by land without producing to the proper officer of customs the certificate in this act required of Chinese persons seeking to land from a vessel. And any Chinese person found unlawfully within the United States shall be caused to remove therefrom to the country from whence he came, by direction of the President of the United States, and at the cost of the United States, after being brought before some justice, judge or commissioner of a court of the United States and found to be one not lawfully entitled to be or remain in the United States." 22 *Stat.* 58, 61.

By the act of July 5th 1884, *c.* 220, the twelfth section of the above act of May 6th 1882 was amended so as to read as follows:

"That no Chinese person shall be permitted to enter the United States by land without producing to the proper officer of customs the certificate in this act required of Chinese persons seeking to land from a vessel. And any Chinese person found unlawfully within the United States shall

be caused to be removed therefrom to the country from whence he came, and at the cost of the United States, after being brought before some justice, judge or commissioner of a court of the United States and found to be one not lawfully entitled to be or to remain in the United States; and in all such cases the person who brought or aided in bringing such person to the United States shall be liable to the Government of the United States for all necessary expenses incurred in such investigation and removal; and all peace officers of the several States and Territories of the United States are hereby invested with the same authority as a marshal or United States marshal in reference to carrying out the provisions of this act or the act of which this is amendatory, as a marshal or deputy marshal of the United States, and shall be entitled to like compensation to be audited and paid by the same officers. And the United States shall pay all costs and charges for the maintenance and return of any Chinese person having the certificate prescribed by law as entitling such Chinese person to come into the United States who may not have been permitted to land from any vessel by reason of the provisions of this act." 23 *Stat.* 115, 117, 118.

Subsequently, by the act of May 5th 1892, *c.* 60, entitled "An act to prohibit the coming of Chinese persons into the United States," it was provided that "all laws now [then] in force prohibiting and regulating the coming into this country of Chinese persons and persons of Chinese descent are hereby continued in force for a period of ten years from the passage of this [that] act." 27 *Stat.* 25, § 1.

The question certified to us is whether the twelfth section of the act of 1882, amended and continued in force as above stated, was abrogated by the treaty with China proclaimed December 8th 1894. 28 *Stat.* 1210.

As this question cannot be properly disposed of without examining the entire treaty, the provisions of the treaty are here given in full:

"Whereas, on the 17th day of November A. D. 1880, and of Kwanghsii the sixth year, tenth moon, fifteenth day, a treaty was concluded between the United States and China, for the purpose of regulating, limiting or suspending the coming of Chinese laborers to, and their residence in, the United States;

"And whereas the Government of China, in view of the antagonism and much deprecated and serious disorders to which the presence of Chinese laborers has given rise in certain parts of the United States, desires to prohibit the emigration of such laborers from China to the United States;

"And whereas the two Governments desire to co-operate in prohibiting such emigration, and to strengthen in other ways the bonds of friendship between the two countries;

"And whereas the two Governments are desirous of adopting reciprocal measures for the better protection of the citizens or subjects of each within the jurisdiction of the other;

"Now, therefore, &c. . . .

"ART. I. The high contracting parties agree that for a period of ten years, beginning with the date of the exchange of the ratifications of this convention, the coming, except under the conditions hereinafter specified, of Chinese laborers to the United States shall be absolutely prohibited.

"ART. II. The preceding article shall not apply to the return to the United States of any registered Chinese laborer who has a lawful wife, child or parent in the United States, or property therein of the value of one thousand dollars, or debts of like amount due him and pending settlement. Nevertheless, every such Chinese laborer shall, before leaving the United States, deposit, as a condition of his return, with the collector of customs of the district from which he departs, a full description in writing of his family, or property, or debts, as aforesaid, and shall be furnished by said collector with such certificate of his right to return under this treaty as the laws of the United States may now or hereafter prescribe and not inconsistent with the provisions of this treaty; and should the written description aforesaid be proved to be false, the right of return thereunder, or of continued residence after return, shall in each case be forfeited. And such right of return to the United States shall be exercised within one year from the date of leaving the United States; but such right of return to the United States may be extended for an additional period, not to exceed one year, in cases where by reason of sickness or other cause of disability beyond his control, such Chinese laborer shall be rendered unable sooner to return—which facts shall be fully reported to the Chinese consul at the port of departure, and by him certified, to the satisfaction of the collector of the port at which such Chinese subject shall land in the United States. And no such Chinese laborer shall be permitted to enter the United States by land or sea without producing to the proper officer of the customs the return certificate herein required.

"ART. III. The provisions of this Convention shall not affect the right at present enjoyed of Chinese subjects, being officials, teachers, students, merchants or travellers for curiosity or pleasure, but not laborers, of coming to the United States and residing therein. To entitle such Chinese subjects as are above described to admission into the United States, they may produce a certificate from their Government or the Government where they last resided viséd by the diplomatic or consular representative of the United States in the country or port whence they depart.

"It is also agreed that Chinese laborers shall continue to enjoy the privilege of transit across the territory of the United States in the course of their journey to or from other countries, subject to such regulations by the Government of the United States as may be necessary to prevent said privilege of transit from being abused.

"ART. IV. In pursuance of Article III of the Immigration Treaty between the United States and China, signed at Peking on the 17th day

of November, 1880, (the 15th day of the tenth month of Kwanghsii, sixth year,) it is hereby understood and agreed that Chinese laborers or Chinese of any other class, either permanently or temporarily residing in the United States, shall have for the protection of their persons and property all the rights that are given by the laws of the United States to citizens of the most favored nation, excepting the right to become naturalized citizens. And the Government of the United States reaffirms its obligation, as stated in said Article III, to exert all its power to secure protection to the persons and property of all Chinese subjects in the United States.

"ART. V. The Government of the United States, having by an act of Congress, approved May 5th 1892, as amended by an act approved November 3d 1893, required all Chinese laborers lawfully within the limits of the United States before the passage of the first named act to be registered as in said act provided, with a view of affording them better protection, the Chinese Government will not object to the enforcement of such acts, and reciprocally the Government of the United States recognizes the right of the Government of China to enact and enforce similar laws or regulations for the registration, free of charge, of all laborers, skilled or unskilled, (not merchants as defined by said act of Congress,) citizens of the United States in China, whether residing within or without the treaty ports. And the Government of the United States agrees that within twelve months from the date of the exchange of the ratifications of this convention, and annually, thereafter, it will furnish to the Government of China registers or reports showing the full name, age, occupation and number or place of residence of all other citizens of the United States, including missionaries, residing both within and without the treaty ports of China, not including, however, diplomatic and other officers of the United States residing or travelling in China upon official business, together with their body and household servants.

"ART. VI. This Convention shall remain in force for a period of ten years beginning with the date of the exchange of ratifications, and, if six months before the expiration of the said period of ten years, neither Government shall have formally given notice of its final termination to the other, it shall remain in full force for another like period of ten years." 28 *Stat.* 1210.

The first proposition made on behalf of the defendant is that the treaty of 1894 should be construed as covering the whole subject of Chinese exclusion, and that its failure to prescribe any judicial procedure for deportation, or to continue in force any prior statute on that subject, shows that the Commissioner was without jurisdiction.

If the words of the treaty of 1894, reasonably interpreted, indicate a purpose to cover the whole subject of Chinese exclusion—including the

methods to be employed to effect that result—then the proceedings against the defendant before the Commissioner were without authority of law; for the treaty itself does not provide any particular method by which Chinese laborers may be prevented from entering the United States, or for sending them out of the country if they illegally enter, although both nations expressed in the treaty a desire to co-operate in preventing the immigration or coming to this country of such persons. China itself recognized it to be its duty to co-operate with the United States to that end, "in view of the antagonism and much deprecated and serious disorders to which the presence of Chinese laborers has given rise in certain parts of the United States." As both countries were agreed that this result should be attained, the court ought to hesitate to adopt any construction of the treaty that would tend to defeat the object each had in view. We must assume that the two Governments knew that a general prohibition of the coming of Chinese laborers to the United States would be ineffectual if no provision were made for determining whether a particular Chinaman seeking to enter the country, and whose right to enter was denied, belonged to the class prohibited from coming within our territorial limits.

It is not disputed that such provision exists if section 12 of the act of May 6th 1882, as amended by the act of July 5th 1884, and as continued in force by the act of May 5th 1892, be held not to have been repealed or superseded by the treaty of 1894.

That it was competent for the two counties by treaty to have superseded a prior act of Congress on the same subject is not to be doubted; for otherwise the declaration in the Constitution that a treaty, concluded in the mode prescribed by that instrument, shall be the supreme law of the land, would not have due effect. As Congress may by statute abrogate, so far at least as this country is concerned, a treaty previously made by the United States with another nation, so the United States may by treaty supersede a prior act of Congress on the same subject. In *Foster & Elam* v. *Neilson*, 2 *Pet.* 253, 314, it was said that a treaty was "to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself without the aid of any legislative provision." In the case of *The Cherokee Tobacco*, 11 *Wall.* 616, 621, this court said "a treaty may supersede a prior act of Congress, and an act of Congress may supersede a prior treaty." So in the *Head Money Cases*, 112 *U. S.* 580, 599, this court said: "So far as a treaty made by the United States with any foreign nation can become the subject of judicial cognizance in the courts of this country, it is subject to such acts as Congress may pass for its enforcement, modification or repeal." Again, in *Whitney* v. *Robertson*, 124 *U. S.* 190, 194: "By the Constitution a treaty is placed on the same footing, and made of like obligation, with an act of legislation. Both are declared by that instrument to be the supreme law of the land, and no superior

efficacy is given to either over the other. When the two relate to the same subject, the courts will always endeavor to construe them so as to give effect to both, if that can be done without violating the language of either; but if the two are inconsistent, the one last in date will control the other, provided always that the stipulation of the treaty on the subject is self-executing." See also *Taylor* v. *Morton*, 2 *Curtis*, 454, 459; *Clinton Bridge Case*, 1 *Woolworth*, 155; *Ropes* v. *Church*, 8 *Blatchf*, 304; 2 *Story on Const.*, § 1838. Nevertheless, the purpose by statute to abrogate a treaty or any designated part of a treaty, or the purpose by treaty to supersede the whole or a part of an act of Congress, must not be lightly assumed, but must appear clearly and distinctly from the words used in the statute or in the treaty.

In the case of statutes alleged to be inconsistent with each other in whole or in part, the rule is well established that effect must be given to both, if by any reasonable interpretation that can be done; that "there must be a positive repugnancy between the provisions of the new laws and those of the old; and even then the old law is repealed by implication only *pro tanto*, to the extent of the repugnancy;" and that "if harmony is impossible, and only in that event, the former is repealed in part or wholly, as the case may be." *Wood* v. *United States*, 16 *Pet.* 342, 363; *United States* v. *Tynen*, 11 *Wall.* 88, 93; *State* v. *Stoll*, 17 *Wall.* 425, 431. In *Frost* v. *Wenie* 157, *U. S.* 46, 58, this court said: "It is well settled that repeals by implication are not to be favored. And when two statutes cover, in whole or in part, the same matter, and are not absolutely irreconcilable, the duty of the court—no purpose to repeal being clearly expressed or indicated—is, if possible, to give effect to both. In other words, it must not be supposed that the legislature intended by a later statute to repeal a prior one on the same object, unless the last statute is so broad in its terms and so clear and explicit in its words as to show that it was intended to cover the whole subject, and, therefore, to displace the prior statute."

The same rules have been applied where the claim was that an act of Congress had abrogated some of the provisions of a prior treaty between the United States and China. *Chew Heong* v. *United States*, 112 *U. S.* 536, 550. In that case it was held that the treaty could stand with the subsequent statutes, and, consequently, it was enforced.

Like principles must control when the question is whether an act of Congress has been superseded in whole or in part by a subsequent treaty. A statute enacted by Congress expresses the will of the People of the United States in the most solemn form. If not repugnant to the Constitution, it is made by that instrument a part of the supreme law of the land, and should never be held to be displaced by a treaty, subsequently concluded, unless it is impossible for both to stand together and be enforced. So far from there being any inconsistency between the statute and treaty

here in question, the twelfth section of the act of 1882, as amended in 1884 and continued in force for ten years from and after the passage of the act of 1892, is in absolute harmony with the treaty and can be enforced without affecting or impairing any right secured by the treaty. On the contrary, the enforcement of that section as amended will serve to advance the purpose of the two countries in respect of Chinese laborers, as avowed in the treaty of 1894. Despite the ingenious argument to the contrary, we do not perceive any difficulty whatever in reaching this conclusion, after carefully scrutinizing the treaty and the statute. A different conclusion would be hostile to the objects which, as avowed in the treaty, both the United States and China desired to accomplish. This is so clearly manifest that argument cannot, as we think, make it more so.

The question certified is answered in the negative, and an order so declaring will be sent to the Circuit Court of Appeals.

Mr. Justice GRAY did not hear the argument and took no part in the decision.

True copy.

Test:

Clerk Supreme Court, U. S.

Supreme Court of the United States.

No. 525.—October Term, 1901.

Chin Bak Kan, Appellant, *vs.* The United States. } Appeal from the District Court of the United States for the Northern District of New York.

[June 2, 1902.]

Complaint under oath was duly made before a commissioner of the United States for the Northern District of New York, charging "that Chin Bak Kan did, on or about the 13th day of March, 1901, at Burke in said district, knowingly and wrongfully come from Canada, in the province of Quebec, into the Northern District of New York, to wit: into Burke in the county of Franklin and State of New York, in the United States, he, the said Chin Bak Kan being then and there a Chinese person and laborer, and a person prohibited by the laws of the United States of America from being and remaining in the United States, and he, the said Chin Bak Kan, then and there being such Chinese person as aforesaid, was then and there found unlawfully in the United States at Burke aforsaid, in violation of the acts of the Congress in such case made and provided."

A warrant for the apprehension of Chin Bak Kan was issued March 13, 1901, and he was arrested and brought before the commissioner. He was informed of the charge against him, advised that he would be permitted to make a statement without or with oath, or to refuse to make any statement or to answer any question put to him, and was entitled to reasonable time to send for counsel and procure the attendance of witnesses. He pleaded not guilty to the charge, "but admitted that he had just come into the United States." He was thereafter represented by counsel. Subsequently a hearing and trial was commenced before the commissioner who issued the warrant. That officer having been taken sick, the hearing was continued and concluded before another commissioner, who found and adjudged upon the evidence as follows: "I now hereby find and adjudge that the said Chin Bak Kan is a Chinese person and laborer, that he is not a diplomatic or other officer of the Chinese or any other government, and unlawfully entered the United States, as charged in said complaint. And I further adjudge him, said Chin Bak Kan, guilty of not being lawfully entitled to be or remain in the United States. I further find and adjudge that he, said Chin Bak Kan, came from the Empire of China, but he has not made it appear to me that he was a subject or citizen of some other country than China. And I hereby order and adjudge said Chin Bak Kan to be imme-

diately removed from the United States to the Empire of China. A certified copy of this judgment shall be the process upon which said removal of said Chin Bak Kan shall be made from the United States to the Empire of China. And said process shall be executed by the Hon. C. D. MacDougall, United States marshal for said district."

An appeal was prosecuted to the District Court of the United States for the Northern District of New York, but the appeal was dismissed and the judgment for the deportation of the defendant was affirmed.

From the final order of the District Court an appeal was then taken to this court.

Mr. Chief Justice FULLER delivered the opinion of the Court:

By section one of the act of May 6, 1882, (22 Stat. 58, c. 126,) it was provided that from and after the expiration of ninety days, and until the expiration of ten years, the coming of Chinese laborers to the United States should be suspended, and during such suspension it was made unlawful for any Chinese laborer to come, or, having come after the expiration of said ninety days, to remain within the United States.

By section four provision was made for certificates to be granted to such Chinese as were entitled under the treaty of November 17, 1880, to go from, or come to, the United States, of their free will and accord, in order to identify them.

The twelfth section of the act was as follows: "That no Chinese person shall be permitted to enter the United States by land without producing to the proper officer of customs the certificate in this act required of Chinese persons seeking to land from a vessel. And any Chinese person found unlawfully within the United States shall be caused to be removed therefrom to the country from whence he came, by direction of the President of the United States, and at the cost of the United States, after being brought before some justice, judge, or commissioner of a court of the United States and found to be one not lawfully entitled to be or remain in the United States."

This section was amended by the act of July 5, 1884, (23 Stat. 115, c. 220,) so as to read as follows: "That no Chinese person shall be permitted to enter the United States by land without producing to the proper officer of customs the certificate in this act required of Chinese persons seeking to land from a vessel. And any Chinese person found unlawfully within the United States shall be caused to be removed therefrom to the country from whence he came, and at the cost of the United States, after being brought before some justice, judge, or commissioner of a court of the United States and found to be one not lawfully entitled to be or to remain in the United States; and in all such cases the person who brought or aided in bringing such person to the United States shall be liable to the

government of the United States for all necessary expenses incurred in such investigation and removal; and all peace officers of the several States and Territories of the United States are hereby invested with the same authority as a marshal or United States marshal in reference to carrying out the provisions of this act or the act of which this is amendatory, as a marshal or deputy marshal of the United States, and shall be entitled to like compensation, to be audited and paid by the same officers. And the United States shall pay all costs and charges for the maintenance and return of any Chinese person having the certificate prescribed by law as entitling such Chinese person to come into the United States, who may not have been permitted to land from any vessel by reason of any of the provisions of this act."

By section one of the act of May 5, 1892, (27 Stat. 25, c. 60,) it was provided: "That all laws now in force prohibiting and regulating the coming into this country of Chinese persons and persons of Chinese descent are hereby continued in force for the period of ten years from the passage of this act."

Sections two, three and six were as follows:

"SEC. 2. That any Chinese person or person of Chinese descent, when convicted and adjudged under any said laws to be not lawfully entitled to be or remain in the United States, shall be removed from the United States to China, unless he or they shall make it appear to the justice, judge, or commissioner before whom he or they are tried that he or they are subjects or citizens of some other country, in which case he or they shall be removed from the United States to such country: *Provided*, That in any case where such other country of which such Chinese person shall claim to be a citizen or subject shall demand any tax as a condition of the removal of such person to that country, he or she shall be removed to China.

"SEC. 3. That any Chinese person or person of Chinese descent arrested under the provisions of this act or the acts hereby extended shall be adjudged to be unlawfully within the United States unless such person shall establish, by affirmative proof, to the satisfaction of such justice, judge, or commissioner, his lawful right to remain in the United States."

"SEC. 6. And it shall be the duty of all Chinese laborers within the limits of the United States, at the time of the passage of this act, and who are entitled to remain in the United States, to apply to the collector of internal revenue of their respective districts, within one year after the passage of this act, for a certificate of residence, and any Chinese laborer, within the limits of the United States, who shall neglect, fail, or refuse to comply with the provisions of this act, or who, after one year from the passage hereof, shall be found within the jurisdiction of the United States without such certificate of residence, shall be deemed and adjudged to be unlawfully within the United States, and may be arrested, by any United States customs official, collector of internal revenue or his deputies, United States marshal or his deputies, and taken before a United States judge, whose duty it shall be to order that he be deported from the United States as hereinbefore provided, unless he shall establish clearly to the satisfaction of said judge, that by reason of accident, sickness or other unavoidable cause, he has been unable to procure his certificate, and to the satisfaction

of the court, and by at least one credible white witness, that he was a resident of the United States at the time of the passage of this act; and if upon the hearing, it shall appear that he is so entitled to a certificate, it shall be granted upon his paying the cost.

"Should it appear that said Chinaman had procured a certificate which has been lost or destroyed, he shall be detained and judgment suspended a reasonable time to enable him to procure a duplicate from the officer granting it, and in such cases, the cost of said arrest and trial shall be in the discretion of the court.

"And any Chinese person other than a Chinese laborer, having a right to be and remain in the United States, desiring such certificate as evidence of such right may apply for and receive the same without charge."

Section six was amended by the act of November 3, 1893, (28 Stat. 7, c. 14.)

Article I of the treaty with China, proclaimed November 8, 1894, (28 Stat. 1210,) was: "The high contracting parties agree that for a period of ten years, beginning with the date of the exchange of the ratifications of this convention, the coming, except under the conditions hereinafter specified, of Chinese laborers to the United States shall be absolutely prohibited."

Article II provided: "The preceding article shall not apply to the return to the United States of any registered Chinese laborer who has a lawful wife, child, or parent in the United States, or property therein of the value of one thousand dollars, or debts of like amount due him and pending settlement. . . . And no such Chinese laborer shall be permitted to enter the United States by land or sea without producing to the proper officer of the customs the return certificate herein required."

Article V: "The government of the United States, having by an act of the Congress, approved May 5, 1892, as amended by an act approved November 3, 1893, required all Chinese laborers lawfully within the limits of the United States before the passage of the first named act to be registered as in said act provided, with a view of affording them better protection, the Chinese government will not object to the enforcement of such acts, and reciprocally the government of the United States recognizes the right of the government of China to enact and enforce similar laws or regulations for the registration, free of charge, of all laborers, skilled or unskilled, (not merchants as defined by said acts of Congress,) citizens of the United States in China, whether residing within or without the treaty ports."

In *United States* v. *Lee Yen Tai*, just decided, the question was propounded to us by the Circuit Court of Appeals for the Second Circuit on certificate: "Is section 12 of 'An act to execute certain treaty stipulations relating to the Chinese, approved May 6, 1882,' as amended by section 3 of the amendatory act of July 5, 1884, repealed by the treaty or convention with China of December 8, 1894?" and that question we answered in the negative.

The act of March 3, 1901, (31 Stat. 1093, c. 845,) provides:

"That it shall be lawful for the district attorney of the district in which any Chinese person may be arrested for being found unlawfully within the United States, or having unlawfully entered the United States, to designate the United States commissioner within such district before whom such Chinese person shall be taken for hearing.

"SEC. 2. That a United States commissioner shall be entitled to receive a fee of five dollars for hearing and deciding a case arising under the Chinese exclusion laws.

"SEC. 3. That no warrant of arrest for violations of the Chinese exclusion laws shall be issued by the United States commissioners excepting upon the sworn complaint of a United States district attorney, assistant United States district attorney, collector, deputy collector, or inspector of customs, immigration inspector, United States marshal, or deputy United States marshal, or Chinese inspector, unless the issuing of such warrant of arrest shall first be approved or requested in writing by the United States district attorney of the district in which issued."

The errors assigned may be grouped into those which presented the question of the effect of the treaty of 1894 by way of repeal, and these have been disposed of by our decision in *United States* v. *Lee Yen Tai*, *ante*, ——; those in respect of the assertion of citizenship and the action taken thereon; and certain objections of want of jurisdiction because of insufficiency of the complaint. The latter relate to lack of positive averment of the facts, and as to the official character of the person who made the complaint. The complaint was made by one Ketchum, and, although it was not therein stated, it appears from the official register of the government that he was a Chinese inspector, and as such authorized under the statute.

The charge was made on information and belief, but no objection was raised to the complaint on that ground, and we think the ruling in *Fong Yue Ting* v. *United States*, 149 U. S. 729, applies that defects in complaint or pleadings do not affect the authority of the commissioner or judge or the validity of the statute.

Something is said in respect of want of jurisdiction in the commissioner because section six of the act of 1892 provides that Chinese laborers without certificates may be "taken before a United States judge;" but we concur in the views of the Circuit Court of Appeals for the Ninth Circuit in *Fong Mey Yuk* v. *United States*, 113 Fed. Rep. 898, that the act is satisfied by proceeding before "a justice, judge, or commissioner." These are the words used in section twelve of the act of 1882; section twelve of the act of 1884; section thirteen of the act of 1888; and section three of the act of 1892; while the first section of the act of March 3, 1901, explicitly authorizes the district attorney to designate the commissioner before whom the Chinese person may be brought. The words "United States judge," "judge" and "court," in section six, seem to us to refer to the tribunal authorized to deal with the subject, whether composed of a justice, a judge,

or a commissioner. A United States commissioner is a *quasi* judicial officer, and in these hearings he acts judicially. Moreover, this case was taken by appeal from the commissioner to the judge of the district court, and his decision was affirmed, so that there was an adjudication by a United States judge in the constitutional sense as well as by the commissioner acting as a judge in the sense of the statute.

But it is argued that the commissioner had no jurisdiction to act because the claim of citizenship was made. The ruling in *United States* v. *Wong Kim Ark*, 169 U. S. 649, was to this effect: "A child born in the United States, of parents of Chinese descent, who, at the time of his birth, are subjects of the Emperor of China, but have a permanent domicil and residence in the United States, and are there carrying on business, and are not employed in any diplomatic or official capacity under the Emperor of China, becomes at the time of his birth a citizen of the United States." It is impossible for us to hold that it is not competent for Congress to empower a United States commissioner to determine the various facts on which citizenship depends under that decision.

By the law the Chinese person must be adjudged unlawfully within the United States unless he "shall establish by affirmative proof, to the satisfaction of such justice, judge, or commissioner, his lawful right to remain in the United States." As applied to aliens there is no question of the validity of that provision, and the treaty, the legislation, and the circumstances considered, compliance with its requirements cannot be avoided by the mere assertion of citizenship. The facts on which such a claim is rested must be made to appear. And the inestimable heritage of citizenship is not to be conceded to those who seek to avail themselves of it under pressure of a particular exigency, without being able to show that it was ever possessed.

Section thirteen of the act of September 13, 1888, provides that any Chinese person, or person of Chinese descent, found unlawfully in the United States, may be arrested on a warrant issued upon a complaint under oath, "by any justice, judge, or commissioner of any United States court," and when convicted, on a hearing, and found and adjudged to be one not lawfully entitled to be or remain in the United States, shall be removed to the country whence he came. "But any such Chinese person convicted before a commissioner of the United States court may, within ten days from such conviction, appeal to the judge of the District Court for the district."

It seems to have been assumed, during the years following the date of the act, and is conceded by the United States, that although most of its provisions were dependent upon the ratification of the treaty of March 12, 1888, and failed with the failure of ratification, that this section is in and of itself independent legislation and in force as such. Accordingly in this

case an appeal was taken from the judgment of deportation rendered by the commissioner to the judge of the District Court of the United States for the Northern District of New York, and, upon hearing, the District Court affirmed that judgment. From the judgment of the District Court, this appeal was taken under section five of the act of March 3, 1891, on the ground that the construction of the treaty of 1894 was drawn in question. Except in cases under that section where the question of jurisdiction alone is certified, we have power to dispose of the entire case, but as the jurisdiction of the commissioner is sustained, we are of opinion that we cannot properly re-examine the facts already determined by two judgments below. That is the general rule, and there is nothing to take this case out of its operation, and, on the contrary, the conclusion is, *a fortiori*, justified. The same reasoning in respect to the authority to exclude applies to the authority to expel, and the policy of the legislation in respect to exclusion and expulsion is opposed to numerous appeals. And we are not disposed to hold that where a Chinese laborer has evaded the executive jurisdiction at the frontier and got into the country, he is therefore entitled to demand repeated rehearings on the facts.

Judgment affirmed.

No. 526.

Chin Ying, Appellant, *vs.* The United States. } Appeal from the District Court of the United States for the Northern District of New York.

Mr. Chief Justice FULLER: This case is similar to that just decided, and the judgment of the court below is

Affirmed.

Mr. Justice GRAY did not hear the argument and took no part in these decisions.

Mr. Justice BREWER and Mr. Justice PECKHAM dissented.

True copy.

Test:

Clerk Supreme Court, U. S.